



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG- 2019-0521]

RIN 1625-AA00

Safety Zone; Beaufort Water Festival Air Show, Beaufort, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Beaufort River in Beaufort, SC. The safety zone is needed to ensure the safety of life on navigable waters of the Beaufort River during the Beaufort Water Festival Air Show. This rule will prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Charleston (COTP) or a designated representative.

DATES: This rule is effective from 12 p.m. until 5 p.m. on July 20, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2019-0521 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Jeromy Sherrill, Sector Charleston Office of Waterways Management, U.S. Coast Guard; telephone (843) 740-3186, email Jeromy.N.Sherrill@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive necessary information from the event sponsor for this year’s event until June 20, 2019. The Coast Guard has an existing special local regulation for this event in 33 CFR 100.701, Table to §100.701, paragraph (g) Line 3; however, the existing regulation only covers the event when it is scheduled on the second week of June. This temporary rule is necessary to provide for the safety of participants, spectators, and other vessels navigating the surrounding waterways during the air show.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. Delaying the effective date of this rule would be impracticable because the event is taking place on July 20, 2019, and immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233). The Captain of the Port Charleston (COTP) has determined that potential hazards associated with the Beaufort Water Festival Air Show on July 20, 2019 present a safety concern for anyone within the safety zone. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the air show.

IV. Discussion of the Rule

This rule establishes a safety zone from 12 p.m. until 5 p.m. on July 20, 2019. The safety zone will encompass a portion of the waterway that is 700 feet wide by 2600 feet in length on the waters of the Beaufort River in Beaufort, SC. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the Beaufort Water Festival Air Show. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of

Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and available exceptions to the enforcement of the safety zone. The regulated area will impact small designated areas of the Beaufort River for only 5 hours and thus is limited in time and scope. Furthermore, the rule will allow vessels to seek permission to enter the zone. Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the COTP or a designated representative. Vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP or a designated representative may operate in the surrounding areas during the 5 hour enforcement period. The Coast Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is

consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting only 5 hours that will prohibit entry within 700 feet wide by 2600 feet in length on the waters of the

Beaufort River in Beaufort, SC. It is categorically excluded from further review under paragraph L 60(a) in Table 3-1 of U.S. Coast Guard Environmental Planning Implementing Procedures 5090.1. A Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07-0463 to read as follows:

§ 165.T07-0463 Safety Zone; Beaufort Water Festival Air Show, Beaufort, SC.

(a) Location. This rule establishes a safety zone on certain waters of the Beaufort River, Beaufort, SC. The rule creates a regulated area that will encompass a portion of the waterway that is 700 feet wide by 2600 feet in length on waters of the Beaufort River encompassed within

the following points: (1) 32° 25' 47" N / 080° 40' 44" W, (2) 32° 25' 41" N / 080° 40' 14" W, (3) 32° 25' 35" N / 080° 40' 16" W, (4) 32° 25' 40" N / 080° 40' 46" W,

All coordinates are North American Datum 1983.

(b) Definition. As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Charleston (COTP) in the enforcement of the safety zone.

(c) Regulations. (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by contacting the US Coast Guard Sector Charleston Command Center via VHF-FM marine channel 16 or at (843) 740-7050. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

Enforcement period. This rule will be enforced from 12 p.m. until 5 p.m. on July 20, 2019.

Dated: July 15, 2019

J. W. Reed,
Captain, U.S. Coast Guard
Captain of the Port, Charleston.
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